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IN THE

SUPREME COURT OF THE UNITED STATES.

TERM—1968.

No. 1357

NI PILKINTON,
Petitioner,

vs.

CATHERINE I. PILKINTON,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Eighth Circuit.

NI PILKINTON,
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Petitioner—Pro Se.

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INDEX.

	Page
Petition	1
Appendix—Opinion of United States Court of Appeals for the Eighth Circuit	11

Cases Cited.

Burton v. Wilmington Parking Authority, 365 U. S. 715	5
Jensen v. Oleson, 353 F. 2d 825	9
Rooker v. Fidelity Trust Co., 263 U. S. 413, 415-416 (1923)	9
U. S. v. Price, Supreme Court Nos. 59 and 60, October term 1965	5
Warner Publications v. Popular Publications, 87 F. 2d 913	9

Statutes and Rules Cited.

42 U. S. C. A., §§ 1981 and 1983	9
Federal Rules of Civil Procedure, Rule 55	3
Missouri Constitution:	
Article 1, Section 2	5
Article 10, Section 10	5
R. S. Mo. 1949:	
Chapter 451	2
Chapter 452	2
Section 510.030	5
United States Constitution:	
Article 3, Sec. 2	2, 3
Fourteenth Amendment	2, 4, 5
Article 1, Sec. 9	2
Fifth Amendment	2, 4, 5
Sixth Amendment	2, 4

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To the United States Court of Appeals for the Eighth Circuit.

A. The opinion of the United States Circuit Court of Appeals has not yet been reported but is appended to this petition. The opinion of the U. S. District Court will be found on pages 51 to 53 of the record.

The opinion of the Springfield Mo. Court of Appeals will be found in 401 S. W. 2d 505.

B. The petitioner has not had due process of law in the lower courts, state and federal.

1. The date of the judgment sought to be reviewed is Feb. 9, 1968, the mandate of the court has not yet been issued. The judgment was entered Feb. 9, 1968.

2. The motion for a rehearing was denied Feb. 19, 1968.

3. The petitioner believes that Article 3, Sec. 2 of the U. S. Constitution as well as the 5th, 6th and 14th amendments to the constitution of the United States and Article 1, Sec. 9 of the constitution confer jurisdiction on the Supreme Court.

C. The questions presented for review to the higher state courts and to the federal courts are as follows:

1. Can the petitioner be said to have had due process of law when the respondent conspired with the sheriff's department and the prosecuting attorney to cause his arrest on two trumped up felony charges, so his property could be stolen while he was held in jail without bail?

2. Has the petitioner had due process of law when he was held in jail three months while the courts, state and federal, refused to take the proffered bail, and refuse to grant a hearing on a petition for habeas corpus?

3. Has the petitioner had due process of law when the respondent, assisted by the sheriff's department and prosecuting attorney steals all his personal property?

4. Has the petitioner had due process of law when the so-called law enforcement officers refused to make any effort to locate or recover the stolen property?

5. Has the petitioner had the equal protection of the laws when the courts, state and federal, refuse to protect his rights in his property? The same rights guaranteed to married women in chapters 451 and 452, R. S. Mo. 1949.

6. Has the petitioner had due process of law in the U. S. District Court when that court refused to grant a hearing on the question of federal jurisdiction? Although the respondent conceded every charge made in the complaint by failing to file an answer to that complaint.

7. Has the petitioner had due process of law when the U. S. District Court for the western district of Missouri dismissed the evidence contained in sixty pages of the printed record with the generalization "absolutely no federal question is involved?

8. Has the petitioner had due process of law when the U. S. District Court disregarded rule 55 (federal rules of civil procedure for the U. S. District courts) and failed to give a judgment for the petitioner by default when the motion for judgment on the pleadings was filed.

9. Has the petitioner had due process of law when the U. S. Circuit Court of Appeals affirmed the judgment of the district court although the respondent filed no answer in the U. S. Circuit Court of Appeals and by her silence admitted every charge made in the complaint.

10. Is it now to be the settled policy of the U. S. Courts that a litigant who prevails in the lower courts may retain that advantage by the simple expedient of failing to file an answer in the U. S. Courts.

D. The constitutional provisions relied on to confer jurisdiction on the supreme Court are quoted below:

1. The privilege of the writ of habeas corpus shall never be suspended unless when in cases of rebellion or invasion the public safety may require it. Article 1, Sec. 9.

2. Article 3, Sec. 2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, . . . In all cases affecting ambassadors, other public ministers and consuls and those in which a state shall be a party, the Supreme Court shall have original jurisdiction . . .

3. Amendments to the constitution:

V. No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment

or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; . . . nor be deprived of life, liberty or property without due process of law; . . .

VI. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury . . .

XIV, Sec. 1. . . . nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

E. The constitutional question of deprivation of liberty without "due process of law" was first raised on Sept. 5, 1963 in a petition for habeas corpus filed in the U. S. Circuit Court of Appeals, 8th Circuit. Since the clerk of that court refuses to prepare a transcript of that case to be considered with this one the circumstances cannot be adequately discussed here. In view of their ruling that petitioner was not entitled to make bail it is only natural that they do not want that case reviewed.

The question of deprivation of property without due process of law was again raised on December 1st, 1964, in a petition for prohibition against Judge Roy W. McGee acting as judge in this case in the state circuit court. There the references to the fifth amendment to the constitution and to the applicable sections of the Missouri Constitution were specifically made. The Missouri Supreme Court denied that petition without a hearing and without comment although the respondent judge filed no answer and did not deny the charges there made. See petition for prohibition, record pages 28 to 34.

The question of deprivation of property without due process of law was also raised on Feb. 10, 1964, in a mo-

tion, in the state circuit court, for the production of a document which appears in the record on pages 45 and 46.

The motion was overruled on Dec. 14, 1964, without comment. See the record page 21.

The question of deprivation of property without due process of law was again raised when petitioner's brief was filed in the Springfield, Mo. Court of Appeals. It was again ignored.

Again when petitioner filed an application to transfer the case to the Missouri Supreme Court, it was specifically set out petitioner had not had due process of law as provided by amendments 5 and 14 of the U. S. Constitution and Article 1, Sec. 2 and 10 of the Mo. Constitution and Sec. 510.030, M. R. S. 1949. The motion to transfer was denied without comment.

F. Review of the judgment of the U. S. District Court and the U. S. Circuit Court of Appeals is sought.

In his complaint and amended complaint, filed in the U. S. District Court, petitioner cited the violations of his constitutional rights under the 5th and 14th amendments. He also cited the case of U. S. v. Price, Supreme Court Nos. 59 and 60, October term 1965, in support of his contention that when the state through its elected representatives, sheriff's dept. and prosecuting attorney conspire with a private person to deprive any one of their liberty and property without due process of law it then becomes state action, an action which the state is debarred from taking and as such is subject to review by the U. S. Courts. See the record pages 1 to 15, also Condensed Statement of Evidence, Record 15 to 16. In his brief filed in the U. S. Circuit Court of Appeals he also cited: Burton v. Wilmington Parking Authority, 365 U. S. 715, where the court said, "We hold that there is state action when-

ever the state has so far insinuated itself into a position of interdependence with the otherwise private person whose conduct is said to violate the 14th amendment."

The district court ignored the complaint and the citations in support. They dismissed it and sixty pages of evidence in the printed record with the sweeping generalization "The case was reviewed by the state courts and it is apparent that no grounds for federal jurisdiction exists." The court of appeals followed the same procedure and affirmed that judgment. The opinion of the district court will be found on page 51 of the record filed in the court of appeals. The judgment of the appellate court is appended to this petition.

G. Concise statement of the case.

This case arose in the Circuit Court of Howell Co. Mo. Aug. 1, 1963. It is a divorce case in which the respondent, Catherine I. Pilkinton, conspired with the sheriff's dept. and prosecuting attorney to cause the arrest of this petitioner on two trumped up charges so they could steal his property while he was held in jail without bail and without trial. The First National Bank and Producers Cry. joined in that conspiracy by turning over to the respondent property and money due to and owned by the petitioner.

The magistrate and circuit court of Howell Co. aided and abetted the conspiracy by refusing to accept bail and by refusing to bring the divorce case and the two criminal charges to trial in a reasonable time. The criminal charges were dismissed without a trial fifteen months after they were filed. The divorce case was tried seventeen months after it was filed.

When it became evident that the Circuit Judge, Gordon Dorris, would take no action on the matters which were

properly before the court, a change of venue was asked and allowed. The new judge, Roy W. McGee, was appointed Oct. 30, 1963, and did not assume jurisdiction until Oct. 15, 1964. During the intervening 11 months and 15 days he refused to have anything to do with the three cases. See court docket on page 21 of the record.

On Sept. 3, 1963, petitioner filed from the county jail, a petition to enjoin the respondent from disposing of the petitioner's property under her control and for an accounting of that property. That was the second of the two petitions filed for that purpose. As the court docket will show (see record page 21) this petition was never acted on by the two circuit judges that claimed jurisdiction at different times in the case.

On Aug. 8, 1963 petitioner filed from the county jail a petition for a writ of habeas corpus, asking to be allowed to post his own property on a bail bond. Approximately $12,500 of real estate and personal property. This petition was held for seven weeks and then dismissed without a hearing. The petitioner was given no opportunity to subpoena witnesses or to present his case in court. A petition for habeas corpus was filed with the Missouri Supreme Court Aug. 15, 1963, that court declined to take jurisdiction. See page 19 of the record.

The petition for habeas corpus was then filed in the U. S. District Court, where it was then denied on the grounds that the federal courts did not have jurisdiction. An appeal was taken to the U. S. Circuit Court of Appeals, that court held the petition for two months before ruling that the federal courts did have jurisdiction, but the petitioner was not deserving of bail. Meanwhile, the petition had been sent to the U. S. Supreme Court, where it was dismissed on the grounds that it was still in the U. S. Court of Appeals. At this point the petitioner sold growing crops on his farm land to the sheriff for a frac-

tion of their value to raise the money to hire a professional bondsman, the sheriff's deputy.

The divorce case was tried Dec. 14, 1964, and the court's order can be found on page 46 of the record. That judgment was appealed to the Springfield Court of Appeals. The judgment of that court can be found in 401 S. W. 2d 505. A motion for transfer to the state Supreme Court was made and can be found at pages 35 to 42 of the record.

When that application was denied the complaint was filed in the U. S. District Court. Respondent filed no answer. On Jan. 16, 1967, petitioner filed a motion for judgment on the pleadings by default. This motion was never acted on by the court. On Feb. 10, 1967, the case was dismissed without giving petitioner a hearing on the question of jurisdiction. The court's opinion will be found at page 51 of the record.

The judgment was appealed to the U. S. Circuit Court of Appeals on April 3, 1967. The respondent filed no answer in that court, but the judgment was affirmed Feb. 9, and the motion for a rehearing denied Feb. 19, 1968.

Due to the fact that petitioner was not given a hearing in the District Court the record of the proceedings in the state courts is sketchy. The respondent did not want a hearing and the petitioner did not get one.

H. Argument amplifying the reasons relied on for the allowance of the writ.

1: The lower federal courts have departed from the established judicial procedure when the district court refused to grant a judgment by default when the respondent failed to file an answer.

2: They also departed from established procedure when they refused to grant a hearing on the question of federal

jurisdiction. The amended complaint must have satisfied the district court that the federal question was presented or he would not have claimed he reviewed it.

3. The district and appellate courts ignored the previous decisions of the Supreme Court, such as the following:

Warner Publications v. Popular Publications, 87 F. 2d 913. "Where substantial federal question is raised by allegations, federal jurisdiction is established." Also in 152 F. 2d 196, the court said, "A case involves a federal question so that a federal district court has jurisdiction without regard to diversity of citizenship when plaintiff in good faith asserts a right, the correct decision of which depends wholly or in part upon the construction of the constitution."

Also in two of the cases cited by the circuit court of appeals in support of their opinion:

Jensen v. Oleson, 353 F. 2d 825, "In passing on the sufficiency of the amended complaint we must assume the well pleaded factual allegations as true." This should apply with particular force to this case where, where the respondent has filed no answer and denied none of the charges made in the complaint.

In Rooker v. Fidelity Trust Co., 263 U. S. 413, 415-416 (1923). There the court said, "If the constitutional question arose it was the duty of the state courts to decide them." The remainder of the cases cited by the court of appeals have no parallel with the present case.

In U. S. C. A. Title 42, §§ 1981 to 1983, note 4 says, "While not intended to enlarge the privileges and immunities of white citizens they furnish additional remedies to secure their enforcement."

Note 5 says: "The equal protection of the laws guaranteed by the constitution, amendment 14, means that any

person has the right, on the same terms and the same conditions as that of others, to come before the courts for the security of his property and his person . . ."

The Missouri laws guarantee a wife adequate representation in court at her husband's expense. There is no equality before the law when a wife, conspiring with the prosecuting attorney and the sheriff's department, can cause her husband's arrest and rob him of the means to make bail and prosecute a defense of the two criminal charges and the divorce case.

Accordingly, the petitioner avails himself of the guarantee of a right to petition for a redress of grievance, under the first amendment to the constitution, and prays that the honorable U. S. Supreme Court will grant certiorari in the above entitled case.

NI PILKINTON,
Route 3—Box 394,
West Plains, Missouri 65775,
Petitioner—Pro Se.

APPENDIX.

United States Court of Appeals
For the Eighth Circuit.

No. 18,808.

Ni Pilkinton, Appellant,

v.

Catherine I. Pilkinton, Appellee.

Appeal from the United States District Court for the Western District of Missouri.

[February 9, 1968.]

Before Van Oosterhout and Matthes, Circuit Judges and Harris, Chief District Judge.

Matthes, Circuit Judge.

This case, filed in the United States District Court for the Western District of Missouri on July 5, 1966, stems from the matrimonial difficulties between Ni Pilkinton and his wife, Catherine I. Pilkinton. Their marriage was dissolved by a judgment of the Circuit Court of Howell County, Missouri awarding Mrs. Pilkinton a divorce, custody of a minor child and $25.00 per month for the support of the child. The judgment was affirmed by the Springfield Court of Appeals in an opinion authored by the Honorable Henry J. Westhues, retired Supreme Court Judge, sitting as Special Commissioner. *Pilkinton v. Pilkinton*, 401 S. W. 2d 505 (1966).

The district court, Honorable William R. Collinson, sua sponte dismissed the action with prejudice for lack of jurisdiction. This appeal followed.

Appellant appeared pro se in the district court and in this Court. Mrs. Pilkinton, although duly summoned, made no appearance in the district court and filed no response to appellant's brief in this Court.

Appellant alleged in his complaint, in vague and general language, that his constitutional rights under the Fifth and Fourteenth Amendments of the United States Constitution were denied in the state court proceedings. He averred that his former wife and the sheriff and prosecuting attorney of Howell County, Missouri entered into a conspiracy to steal his property while he was in jail; that the First National Bank of West Plains, Missouri and the Producers Creamery Company of Springfield, Missouri joined the conspiracy in order to deprive him of the means of making bail and defending two criminal charges and the divorce action.

Appellant prayed (1) that a new trial be held in the United States District Court, or (2) that the record on appeal to the Springfield Court of Appeals be ordered transferred and appellant be permitted to present additional evidence, or (3) that the judgment "of lower court" be reversed and judgment be entered for appellant on his cross-bill in the divorce action.

Judge Collinson, after full consideration of the complaint and other papers filed by appellant found "absolutely no grounds for federal jurisdiction."

From an analysis of the complaint and the supporting documents we, too, are convinced that no basis exists for invoking the jurisdiction of the federal courts. 28 U. S. C., § 1332 is not applicable as both appellant and the defendant are citizens of the State of Missouri. The complaint

utterly fails to allege a claim arising under the Constitution or laws of the United States, 28 U. S. C. § 1331; *Gulley v. First National Bank*, 299 U. S. 109, 112-13 (1936); *Stanturf v. Sipes*, 335 F. 2d 224 (8th Cir. 1964).

It is plainly evident that what appellant seeks in this original action is a review by the federal courts of the proceedings of the Missouri State Courts in the divorce action. Federal courts are without authority to function as an appellate arm of the state courts. See *Rooker v. Fidelity Trust Company*, 263 U. S. 413, 415-16 (1923); *Evans v. Northwest Holding Co.*, 368 F. 2d 531 (8th Cir. 1966); *Jenson v. Olson*, 353 F. 2d 825 (8th Cir. 1965); *Hanna v. Home Ins. Co.*, 281 F. 2d 298 (5th Cir. 1960).

The district court's disposition of the case was entirely proper. The judgment of dismissal is affirmed.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.